

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE



In re the application of: Katsumi SAHODA

Serial No.: 09/772,119

Filed: January 26, 2001

For: Fuel Cell Power Generation System

Attorney Docket No.: OCW-002

Group Art Unit: Not Yet Assigned

Examiner: Not Yet Assigned

RECEIVED
JAN 28 2003
TC 1700

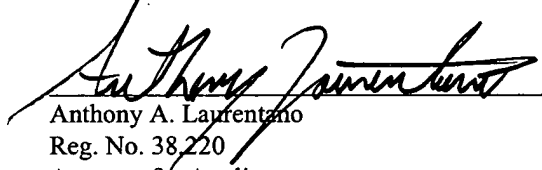
Attention: Office of Petitions
Commissioner for Patents
Box DAC
Washington, D.C. 20231

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October 8, 2002
Date of Signature and of Mail Deposit

By:


Anthony A. Laurentino
Reg. No. 38,220
Attorney for Applicant

Petition Under 37 CFR 1.181 To Withdraw Holding of Abandonment of a Patent Application Based on Failure to Receive Office Action or in the alternative, Petition for Revival of Holding of an Unintentionally Abandoned Patent Application Under 37 CFR 1.137(b)

Dear Sir:

Pursuant to 37 CFR §1.181 the undersigned hereby petitions to withdraw any holding of abandonment that may have been issued in connection with the above-identified patent application.

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On September 11, 2002, Applicant's Attorney learned that the above-identified application had been abandoned due to an inadvertent error by the United States Patent and Trademark Office. A Notice to File Missing Parts was issued by the United States Patent and Trademark Office on March 8, 2001. However, the Notice to File Missing Parts was never received by the Applicant because the customer number of **000595** was erroneously entered for this application, rather than **000959**, the customer number of Applicant's attorney. Attached hereto as Appendix A is a copy of the Application Transmittal Form filed with the application on January 26, 2001, which requests that future communications be addressed to "Anthony A. Laurentano, Esq. at **Customer Number: 000959**". The Notice was consequently sent to a company named "Interface Control System" in Missouri. Interface Control System did not forward the Notice to Applicant's attorney and did not notify the United States Patent and Trademark Office of the error. It is respectfully submitted that Applicant never received the Notice to File Missing Parts, apparently dated **March 8, 2001**, for the above-identified application due to circumstances beyond Applicant's control. Applicant also never received a Notice of Abandonment from the Patent and Trademark Office for the same reason. Accordingly, Applicant respectfully petitions the Commissioner to withdraw any holding of abandonment that may have been issued in connection with the application.

The present Petition includes the following facts and documentation: (a) a summary of the procedures and controls used by the Firm when correspondence is received by the Firm from the Patent & Trademark Office; and (b) a summary of how these procedures and controls were followed in the above-identified application. Also enclosed is a copy of a docket (Appendices B and C) of the Firm, which spans the relevant time period when the Notice to File Missing Parts dated March 8, 2001, if received, would have been docketed by the Firm (e.g., within two months following the date of the Notice to File Missing Parts).

On a daily basis, all mail from the U.S. Patent and Trademark Office delivered to the Firm is directed to a central docket clerk who opens and date stamps each document. The chief Docket Administrator or Docket Administrator Assistant then reviews each correspondence from the Patent and Trademark Office (hereafter referred to as an "Office Action") to

determine the appropriate due date for responding to the Office Action. The due date for responding to the Office Action is then noted on the cover sheet of the Action, including not only the initial due date, but also each possible extension date until the end of the statutory period, if applicable.

After noting the due date(s) for responding to the Office Action on the front of the Action itself, the Docket Administrator obtains the file for the patent application in which the Office Action has been received and also notes the due date(s) for responding to the Action on the cover of the file itself. The file, with the Office Action attached to the front, is then delivered to the appropriate attorney(s) responsible for handling the case and responding to the Office Action.

In addition to the above, the Docket Administrator enters the due date(s) for responding to all Office Actions received from the Patent & Trademark Office in a *computerized docketing system* which utilizes a licensed computer program called PC Master®. All due dates (including any available extension dates) for responding to Office Actions received from the Patent and Trademark Office are entered into this computer program on a daily basis. The information entered into the computerized docketing system includes the serial number and internal reference number of the application in which the response is due, the attorney(s) handling the application, and a description of the type of response due (i.e., missing parts).

Once entered into the computer, these docket entries are sorted by due date and attorney responsible for the action. They are then printed out on both a weekly and monthly basis and are distributed to the appropriate attorneys within the firm.

A copy of the Firm's computerized docket printout for the dates of **May 8-31, 2001** and **October 8-31, 2001** is submitted herewith as Appendices B and C respectively. These dates are well after the Notice to File Missing Parts would have been received by the Firm and entered into the computerized docketing system. If, in the above-identified application, a notification of Missing Requirements had been received by the Firm having a mailing date of

March 8, 2001, and having a response period of two months from the date of mailing, then the following information would have been entered in the Firm's docketing system within two months of receipt, namely, **May 8, 2001** (the first due date for a response and the time frame for which the case should have been docketed), the latest by **October 8, 2001** (the end of the statutory period for a filing response to the Notice and the latest possible time frame for which a Response to Notice to File Missing Parts was due), the serial number and internal reference number of the application, the attorney(s) handling the application, and a description of what was due (i.e., Missing Parts).

Upon review of Appendices B and C, it can be seen that no entry was made in the Firm's computerized docketing system for the above-identified application (serial number 09/772,119) on the dates described above. Specifically, these entries would have been sorted under the initials of the first attorney responsible for the application. In the present case, this attorney is Anthony A. Laurentano, having the initials AAL. However, upon review of the tabbed pages of Appendices B and C (tabbed with orange flags), containing all docket matters for the Firm for the relevant dates described above (i.e., **May 8-31, 2001** and **October 8-31, 2001**), it can be seen that no docket reminder for responding to a Notice to File Missing Parts in the above-identified application (USSN 09/772,119) appears on any of these pages. This indicates that a Notice to File Missing Parts dated **March 8, 2001**, issued in the above-identified application, was *never received* by the Firm.

Since the Office Action (e.g., Notice to File Missing Parts) was never received due to an error on the part of the U.S. Patent and Trademark Office, Applicant respectfully requests that the Commissioner withdraw the holding of abandonment, and reissue the Notice to File Missing Parts. Applicant's believe that no costs are due with regard to the filing of this petition. If fees are due, however, please charge them to our Deposit Account No. 12-0080.

If the Commissioner does not deem this petition under 37 CFR 1.181 to be persuasive, Applicant respectfully requests that this alternative Petition to Revive an Unintentionally Abandoned Application under 37 CFR 1.137(b) be considered. Applicant respectfully submits

that the delay in submitting a response to the Notice to File Missing Parts was unintentional, as evidenced by the foregoing comments.

Applicant further encloses an executed Declaration, Petition and Power of Attorney, as the required reply, pursuant to 37 C.F.R. § 1.137 (b)(1).

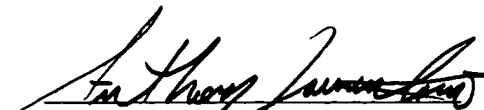
If the Commissioner deems the Petition to Revive to be more appropriate, then Applicant authorizes that payment in the amount of \$640.00 pursuant to 37 CFR §1.17(m) to cover the petition fee be charged to Applicants Deposit Account No. 12-0080. The enclosed fee and reply are deemed to be proper, as required by 37 CFR §1.137(b). Please charge any underpayments or additional fees, or credit any overpayments associated with the issue fee and the petition fee to our Deposit Account No. 12-0080. A duplicate of this sheet is enclosed for that purpose. We respectfully request any necessary extensions of time.

Applicant respectfully requests that the present application be reinstated, and passed to examination.

If there are any questions concerning the Petition to Withdraw the Holding of Abandonment, or the Petition to Revive the Commissioner or a selected delegate is invited to telephone Applicant's representative at the telephone number listed below.

Respectfully submitted,

LAHIVE & COCKFIELD, LLP



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Date: **October 8, 2002**